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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,018	02/10/2004	Robert Lievestro	VER-178XX	9076
207 7590 09/13/2005 WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			EXAMINER CONLEY, FREDRICK C	
			ART UNIT 3673	PAPER NUMBER

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/776,018

Applicant(s)

LIEVESTRO ET AL.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-14, 16, 17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14, 16, 17, 19, 20 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 21-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/06/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

The indicated allowability of claim 18 is withdrawn in view of the newly discovered reference(s) to 6,918,146 to England. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-14, 19-20, and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,850,645 to Ogawa et al in view of U.S. Pat. No. 6,918,146 to England, and U.S. Pat. No. 4,690,859 to Porter et al.

Claims 24-26, Ogawa discloses a vehicle seat cushion, provided with:

- a first foam body 6;
- a second foam body 12 extending below the first foam body;
- detachable connecting means (11a,11b,14a,14b) to connect the first foam body to the second foam body; wherein the first foam body is provided with a covering which is fixedly connected to the first foam body (col. 7 lines 40-46). Ogawa fails to disclose a foam material received in a cavity between the first and second foam body. England discloses a foam body received in a cavity between a first and second body. It would have been obvious for one having ordinary skill in the art at the time of the invention to have a foam body received between the first and second foam bodies as taught by England in order to provide differing amounts of firmness to the cushion of Ogawa.

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Ogawa fails to disclose the foam material being fire retardant. Porter discloses treating underlying cushioning materials of a seat (col. 4 lines 1-3). It would have been obvious to treat the underlying materials as taught by Porter in order to provide a seat that is fire retardant. With regards to the Applicant's recitation "for an aircraft seat", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 2, wherein the covering is connected to at least an upper surface of the first foam body.

Claim 3, wherein the covering is glued to a base material of the first foam body (col. 7 lines 47-50).

Claim 4, wherein the first and second foam body are detachably connected to each other by hook and loop connections (col. 5 lines 53-58).

Claims 5-6, Ogawa discloses all of the Applicant's claimed limitations except for the covering comprising a fire-retardant material, such as glass fiber. Porter discloses breathable glass fiber fabrics for ticking and upholstery. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a glass fiber material as taught by Porter in order to provide an effective fire barrier.

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Claim 7, wherein the second foam body is also provided with a covering (4,5), Ogawa fails to disclose a fire-retardant material, such as glass fiber. Porter discloses breathable glass fiber fabrics for ticking and upholstery. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a glass fiber material as taught by Porter in order to provide an effective fire barrier.

Claim 8, wherein the seat cushion is arranged to be placed on a seat apparatus, in particular a seat (col. 1 lines 1-2). Automobile seats are inherently detachable from the seat apparatus therefore the seat is detachably placed.

Claim 9, wherein the covering is provided with at least a part of the said detachable connecting means (11a,11b) since the cover is integrally connected to the first foam body.

Claim 10, wherein the first and second foam body are detachably connectable to each other only via the integral covering.

Claim 11, wherein the second foam body is arranged, near respective bottom edges to be detachably connected to the covering.

Claim 12, wherein the covering is provided with an upper covering part 3, a lower covering part (4,5) extending opposite it, and side flaps (8,9) extending between the upper and lower covering part.

Claim 13, wherein the covering and the upper foam body bound an inner space in which the second foam body is receivable (fig. 1a).

Claim 14, wherein the lower covering part is provided with an opening offering access to the said inner space (fig. 1a).

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Claim 19, in particular a chair, more in particular a seat provided with a seat cushion (col. 1 lines 1-2)(Ogawa).

Claim 20, a vehicle, provided with a seat apparatus (col. 1 lines 1-2)(Ogawa).

Claim 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,850,645 to Ogawa et al in view of U.S. Pat. No. 6,918,146 to England, and U.S. Pat. No. 4,690,859 to Porter et al., and further in view of U.S. Pat. No. 4,294,489 to Anolick et al.

Claims 16-17, Ogawa, as modified, fails to disclose a lightweight fire-retardant material, such as melamine foam having an average density which is lower than approximately 0.1 gram/cm<sup>3</sup> more in particular lower than approximately 0.02 gram/cm<sup>3</sup>. Anolick discloses a lightweight fire-retardant material, such as melamine foam having an average density which is lower than approximately 0.1 gram/cm<sup>3</sup> more in particular lower than approximately 0.02 gram/cm<sup>3</sup> (col. 3 lines 20-23)(col. 6 lines 25-27). It would have been obvious to employ a lightweight melamine fire-retardant material, such as melamine foam as taught by Anolick in order to provide an underlying cushioning material that possess a degree of fire retardant.

***Allowable Subject Matter***

Claims 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 2-14, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EC  


  
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